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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA AT JUNEAU

RECEIVED

MYRNA I. JOHNSON,

OCT 30 2006

Plaintiff,

vs.

No. J-04-008-CV (RRB)

FRED MEYER STORES, INC., and

JAIME SAN MIGUEL,

Defendants.

VIDEOTAPED DEPOSITION OF MARY LUCAS HILL

Volume 2, Pages 55-107

Taken on behalf of Plaintiff

October 25, 2006

* * *

ORIGINAL

Johnson Myrna v Fred Meyer *Exhibit A 1 of 19*

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1 question.

2 Go ahead.

3 Q. BY MR. CHOATE: Where the file was located that
4 contained this information?

5 A. I would -- my guess is it was located out of the
6 region office in Seattle.

7 Q. And why would it have been at the region office in
8 Seattle as opposed to either in Juneau or in
9 Portland?

10 A. Because at the time that I conducted this
11 interview, my office was in Seattle.

12 Q. All right. Now, at the conclusion of your last
13 deposition, did you direct anybody to the fact that
14 there might be additional materials in regards to
15 your investigation as to Mr. San Miguel in Seattle?

16 A. No.

17 Q. Okay. So when was the first time that you actually
18 saw these documents that -- beyond when you were
19 doing the investigation in 2003, when was the first
20 time you saw these documents that are Exhibit 1?

21 A. Today.

22 Q. All right. So you hadn't seen them before?

23 A. Right.

24 Q. All right. Now, having reviewed them, I assume

25 with your counsel and now as Exhibit 1, do you
Johnson, Myrna v Fred Meyer Exhibit A 2 of 19

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1 Q. When you got this Office Vision, did you initiate
2 any investigation in October of '02?

3 A. Yes, I did.

4 Q. Okay. What did you start doing?

5 A. Well, as I recall, one of the things I did ask
6 Johnna to do was to provide me with specifics with
7 regard to her complaint, and also I recall that I
8 was dealing with or talking with the store director
9 on a pretty regular basis with regard to issues in
10 his store and asking him to talk to Mr. San Miguel
11 to find out, you know, if Johnna was in fact being
12 trained and what the issues were with her schedule.

13 Q. Now, those communications, those would have been in
14 October of 2002?

15 A. Ongoing. Yes.

16 Q. Okay. And they would have been with the store
17 manager?

18 A. That's correct.

19 Q. Was it your normal practice to memorialize, meaning
20 write down, those communications in some fashion?

21 A. Not every phone call. No. And I typically would
22 keep -- would have started a file, and any notes
23 that I would have taken with regard to the issue
24 would have gone into the file, an investigation

25 file.
Johnson, Myrna v Fred Meyer Exhibit A 3 of 19

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1 Q. Okay. Now, looking at the materials that were
2 provided to us by Fred Meyer, do you see any notes
3 of any communications that you had with Mr. Sayre
4 at any time regarding the investigation into
5 Ms. Havard's complaints about Mr. San Miguel?

6 A. I don't.

7 Q. Would you have normally kept or written some formal
8 notes in regard to those conversations?

9 A. Yes.

10 Q. Do you know where those are?

11 A. I don't.

12 Q. Do you have any recollection today of specifically
13 talking to Mr. Sayre about Mr. San Miguel and
14 Ms. Havard's complaints?

15 A. Yes.

16 Q. Okay. Do you recall how many conversations you had
17 with Mr. Sayre?

18 A. I don't.

19 Q. Would it have been more than one?

20 A. Yes, it would have.

21 Q. Would it have been more than five?

22 A. It depends on what time frame you are talking
23 about.

24 Q. What about from October of 2002 through January or

25 *Johnson, Myrna v Fred Meyer Exhibit A 4 of 19*

1 through what your investigation entailed.

2 A. Well, the conclusions based on my conversations
3 with a number of people in that department were
4 that Jaime was not working like he was scheduled to
5 work, that he was coming in late on a pretty
6 regular basis, and that there was a lot of
7 confusion as to who was supposed to do what with
8 regard to assignment of duties.

9 Q. Okay. And what was the -- why was there confusion?
10 What did your investigation determine in that
11 regard?

12 A. Well, the main complaint from the people that I
13 spoke with that worked for him was that there was
14 either no direction or a change of direction after
15 direction was initially given and that he was
16 missing from work on a pretty regular basis.

17 Q. Were there complaints about Mr. San Miguel -- any
18 complaints of him kicking objects or kind of
19 physically acting out?

20 A. My notes show that one of the people that I spoke
21 with said that he -- they knew him to have a temper
22 problem and that they cited a time in I think the
23 warehouse or the freight -- where the freight was
24 that they had witnessed him kick a box of freight.

25 Q. Now, in regards to these complaints, are they the
Johnson, Myrna v Fred Meyer *Exhibit A 5 of 19*

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1 normal sort of complaints that would have supposed
2 to have gone to the store director?

3 A. Yes.

4 Q. Okay. And did you in your investigation find that
5 this information had gone to the store director but
6 Mr. Sayre had not acted upon or not responded to
7 the complaints?

8 A. Either he had not responded to the complaint or had
9 not followed up on addressing the complaints with
10 Jaime.

11 Q. Okay. Now, did you ask Mr. Sayre what he had done
12 in regards to these complaints?

13 A. Yes.

14 Q. Okay. And what did he tell you?

15 A. He indicated that he had addressed some of the
16 issues with Jaime, but clearly from what the
17 investigation showed was that, even if he had
18 talked to him about it, it hadn't done any good.
19 Jaime hadn't improved his attendance at all.

20 So it was a matter of not using the progressive
21 discipline process to address an attendance issue
22 with a manager.

23 Q. Did you talk to Mr. San Miguel directly about these
24 complaints?

25 A. Yes. *Johnson, Myrna v Fred Meyer Exhibit A 6 of 19*

1 Q. Okay. What was your conclusion in that regard?

2 A. I -- there was no -- I had no proof, no witnesses
3 to Mr. San Miguel tearing up tours.

4 Q. Were there complaints regarding employee --
5 inconsistencies in employee discipline by Mr. San
6 Miguel?

7 A. You know, that part of it I don't recall as being
8 that big of an issue.

9 Q. Okay. If you could turn to 202 -- Bates
10 No. 202417.

11 A. Okay.

12 Q. Can you tell me whose handwriting this is?

13 A. That's mine.

14 Q. Okay. Real quickly, if we're looking at 202417,
15 418, 419, and then 420, 421, 422, 423, 424, 425,
16 426, 427, 428, 429, 430, 431, that Bates set, are
17 those all your handwritten notes?

18 A. Yes.

19 Q. Are they all part of the investigation you
20 conducted?

21 A. Yes.

22 Q. Okay. Did you meet with Mr. Sayre before these
23 notes were taken or after, if you recall?

24 A. I don't recall. I really don't.

25 Q. Let me just ask, also. There is a page of
Johnson, Myrna v Fred Meyer, *Exhibit A 7 of 19*

1 MR. CHOATE: Let me rephrase that question. I
2 think that's a good objection.

3 Q. BY MR. CHOATE: If a salaried employee is scheduled
4 to come to work at seven in the morning and doesn't
5 show and hasn't called in, what is the policy at
6 Fred Meyer for dealing with the fact that the
7 employee did not show and did not call in?

8 A. Well, the policy is that you attempt to make --
9 whether you are hourly or salaried, you make an
10 attempt to contact the person to find out where
11 they are. If you are speaking to what the
12 discipline is for --

13 Q. Yes. Why don't you tell me, what's the discipline
14 for that?

15 A. If it's determined that there are no extenuating
16 circumstances and they just plain chose not to come
17 to work, typically you would for what they refer to
18 as a no call/no show, for the first offense, it's a
19 written warning. If it happens again, that's a
20 termination offense.

21 Q. Okay. Now, what if the employee shows up two hours
22 late? What is the discipline?

23 A. That's an attendance issue. You start with
24 counseling, and if it continues, then you move to
25 the next step of discipline, which would typically
Johnson, Myrna v Fred Meyer *Exhibit A 8 of 19*

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1 A. I believe that they are asked to clock in once
2 during the week, and that's for a time and
3 attendance requirement.

4 Q. Okay. Otherwise, there would be no way for the
5 store director to know whether a manager is showing
6 up for their shift other than the store director
7 following up on that, observing it?

8 A. Correct.

9 Q. If a manager -- managerial employee decides to
10 leave early on the shift, is that also an
11 attendance issue if they leave without giving
12 notice?

13 A. Yes.

14 Q. Again, would be responded to by a series of
15 progressive discipline?

16 A. Correct.

17 Q. Now, if a managerial employee leaves a job because
18 of a personal issue, whether it's a medical problem
19 or it's a kid daycare issue or some other reason,
20 without explanation, would that normally be
21 something which would be treated as an attendance
22 problem with counseling being the first step in
23 discipline?

24 A. That's correct.

25 Q. Did you determine in your investigation whether
Johnson, Myrna v Fred Meyer *Exhibit A 9 of 19*

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1 A. As I recall, he was given a last and final warning.

2 Q. Okay. In your -- okay. If you could, then,
3 explain to me where a last and final warning fits
4 within the progressive discipline system you just
5 discussed.

6 A. It's a written warning that says "last and final"
7 at the top, and that means that we're not -- we
8 won't do any more written warnings, we won't do any
9 other discipline, that when you are given a last
10 and final warning, if you violate the rule again,
11 you can expect to be discharged.

12 Q. Now, in giving a last and final warning, had you
13 concluded that Mr. San Miguel had already been
14 given the series of progressive discipline steps
15 before then, before that, or did you jump to that
16 step?

17 A. We jumped to that step based on the fact that he
18 had been counseled by the store director. But due
19 to the fact he was department manager and we had
20 found that it was a pretty serious attendance
21 issue, we decided that he deserved to receive a
22 last and final warning, and that he understood that
23 he could not continue to miss time as he had
24 previously.

25 Q. And the form that would have had the last and final
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1 warning, it would say "last and final," like
2 handwritten at the top of the written warning form?

3 A. That's correct.

4 Q. Okay. And do you recall issuing that?

5 A. Yes.

6 Q. And who would have signed off on that?

7 A. It would have been the regional vice-president and
8 myself and Mr. San Miguel. And probably Fred as
9 well.

10 Q. Now, in that same process or trip, did you reach
11 certain conclusions regarding Mr. Sayre's
12 management practices that resulted in some form of
13 discipline for Mr. Sayre?

14 A. You know, I don't recall if we disciplined
15 Mr. Sayre that trip.

16 Q. Did you discipline him at some other point?

17 A. I believe we did.

18 Q. And what -- if you recall, what was the discipline
19 for?

20 A. For failing to address issues in his store.

21 Q. Including the one with Mr. San Miguel?

22 A. That's correct.

23 Q. Okay. Do you recall -- you've identified all of
24 the handwritten documents as being in your own

25 handwriting that are part of this Exhibit 1.
Johnson, Myrna v Fred Meyer Exhibit A 11 of 19

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1 Ms. Havard?

2 A. Yes.

3 Q. And then documents stamped Nos. 202420 through
4 202431, are those simply some of your handwritten
5 notes based on interviews of different people at
6 the Juneau store?

7 A. Yes.

8 Q. Can you tell us at this time if those handwritten
9 notes were in person or over the telephone or based
10 on interviews?

11 A. They were in person.

12 Q. So you were at the Juneau store?

13 A. Yes.

14 Q. Now, during the time that you had responsibility
15 for the Juneau store as a human resources
16 representative for Fred Meyer, that would have
17 covered 2001, 2002 and part of 2003?

18 A. Correct.

19 Q. And for the salaried employees in the Juneau store
20 during that time frame, what was their employment
21 status?

22 A. They were at-will.

23 Q. And what do you understand employment at-will to
24 be?

25 MR. CHOATE: I'm going to object to your
Johnson, Myrna v Fred Meyer Exhibit A 12 of 19

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1 you investigated.

2 **A. Yes.**

3 Q. Do you recall that now, saying that?

4 **A. Yes.**5 Q. Okay. And at that time had you reviewed any
6 documents before going to your deposition in May of
7 2006?8 **A. I'm sure I did.**9 Q. Okay. Had you reviewed the documents that you
10 discussed today, the ones with the Office Vision?
11 Had you looked at those before your deposition in
12 May of 2006?13 **A. I don't believe so. No.**14 Q. Okay. Now, some documents were -- apparently you
15 did review some documents, and I'm going to have
16 the court reporter mark the document set that I
17 have sent to her as Exhibit 1 to the second volume
18 of your deposition, and I'm going to ask you,
19 Mrs. Hill, if these are the documents you reviewed
20 before coming to your deposition today?21 **A. Okay.**

22 Q. Will you look at them real quickly.

23 MR. DICKENS: Counsel, they've not been handed
24 to her yet.

25 MR. CHOATE: I'm sorry. All right.

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1 question.

2 Go ahead.

3 Q. BY MR. CHOATE: Where the file was located that
4 contained this information?5 **A. I would -- my guess is it was located out of the
6 region office in Seattle.**7 Q. And why would it have been at the region office in
8 Seattle as opposed to either in Juneau or in
9 Portland?10 **A. Because at the time that I conducted this
11 interview, my office was in Seattle.**12 Q. All right. Now, at the conclusion of your last
13 deposition, did you direct anybody to the fact that
14 there might be additional materials in regards to
15 your investigation as to Mr. San Miguel in Seattle?16 **A. No.**17 Q. Okay. So when was the first time that you actually
18 saw these documents that -- beyond when you were
19 doing the investigation in 2003, when was the first
20 time you saw these documents that are Exhibit 1?21 **A. Today.**

22 Q. All right. So you hadn't seen them before?

23 **A. Right.**24 Q. All right. Now, having reviewed them, I assume
25 with your counsel and now as Exhibit 1, do you

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1 (Marked Deposition Exhibit No. 1.)

2 Q. BY MR. CHOATE: For the record, Mrs. Hill, I'm
3 going to -- basically these documents are
4 production that we received from Fred Meyer in
5 July -- on July 14, 2006, and they consist of a
6 series of Bates stamped documents with the Bates
7 Nos. 202414 to 202438.G.

8 Do you have those in front of you?

9 **A. I do.**10 Q. Okay. Are these the documents that you mentioned
11 earlier today that you had looked at before coming
12 to your deposition?13 **A. Yes.**14 Q. Okay. Now, do you know the source of these
15 documents, where they came from?16 **A. I would assume they came from a file that had been
17 put together with regard to a complaint received.**18 Q. Okay. And can you tell me -- because we had never
19 seen these documents, were never provided them
20 until the middle of July, really actually after the
21 sort of close of formal discovery or the end of
22 formal discovery.23 Can you tell me, if you know today, where that
24 file was?

25 MR. DICKENS: My understanding is that the

Exhibit 10 is maybe 10 pages long. I could -- the first date that

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1 recognize them?

2 **A. Yes, I do.**

3 Q. Okay. And what do these documents represent?

4 **A. Copies of SYSM notes sent back and forth between
5 Johnna Havard and myself, and it looks like there
6 are some here that were referred to the store
7 director. Information that was requested as a
8 result of a complaint received from Johnna Havard.**9 Q. Now, we'll sort of go through the documents in more
10 detail, but when you refer to the Office Visions
11 that you received from Johnna Havard, do you refer
12 to them collectively, meaning as a group, as being
13 a complaint or were there complaints, plural?14 **A. I believe I received the initial complaint from
15 Johnna, and then I asked her to provide me with any
16 documentation that she may have, any notes
17 supporting the incidents that were at the heart of
18 her complaint.**19 Q. And do you recall now when you first received a
20 complaint from Johnna Havard regarding Jaime San
21 Miguel?22 **A. I don't remember right off the top of my head. I
23 would have to refer to -- I believe in reviewing
24 these that it was in 2002.**

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1 the fall of 2002 would have been Dennis Affleck?	1 Q. Okay. Now, looking at the materials that were
2 A. Correct.	2 provided to us by Fred Meyer, do you see any notes
3 Q. And then would you have been the person at HR to	3 of any communications that you had with Mr. Sayre
4 deal with issues like this?	4 at any time regarding the investigation into
5 A. Correct.	5 Ms. Havard's complaints about Mr. San Miguel?
6 Q. Now, Ms. Havard's Office Vision at the bottom of	6 A. I don't.
7 this page 202437 talks about her doing ten- or	7 Q. Would you have normally kept or written some formal
8 12-hour shifts but not receiving any training,	8 notes in regard to those conversations?
9 being yelled at if she comes in and writes a tour,	9 A. Yes.
10 that her manager doesn't show up or shows up late,	10 Q. Do you know where those are?
11 and she's generally complaining.	11 A. I don't.
12 I take it these are the sorts of complaints	12 Q. Do you have any recollection today of specifically
13 that you've probably seen over -- during your	13 talking to Mr. Sayre about Mr. San Miguel and
14 career working for Fred Meyer?	14 Ms. Havard's complaints?
15 A. That's correct.	15 A. Yes.
16 Q. What is the normal practice when you receive	16 Q. Okay. Do you recall how many conversations you had
17 something like this? What would you normally do?	17 with Mr. Sayre?
18 A. I would investigate it.	18 A. I don't.
19 Q. Okay. Well, when you got a copy of this Office	19 Q. Would it have been more than one?
20 Vision from Mr. Hill, were you guys engaged at that	20 A. Yes, it would have.
21 time or dating or did you have a personal	21 Q. Would it have been more than five?
22 relationship or was it all professional in '02?	22 A. It depends on what time frame you are talking
23 A. In '02, we were living together.	23 about.
24 Q. Okay. So a personal relationship?	24 Q. What about from October of 2002 through January or
25 A. Yes.	25 February of 2003?
Page 69	Page 71
1 Q. When you got this Office Vision, did you initiate	1 A. No. It wouldn't have been as many as five
2 any investigation in October of '02?	2 probably.
3 A. Yes, I did.	3 Q. Okay. What would have been your purpose in talking
4 Q. Okay. What did you start doing?	4 to the store director?
5 A. Well, as I recall, one of the things I did ask	5 A. To find out if he was aware of the issues in his
6 Johnna to do was to provide me with specifics with	6 store and what he knew about them and if things
7 regard to her complaint, and also I recall that I	7 were being monitored in apparel, if there were
8 was dealing with or talking with the store director	8 issues, and that sort of thing.
9 on a pretty regular basis with regard to issues in	9 Q. Okay. And based upon the communications -- do you
10 his store and asking him to talk to Mr. San Miguel	10 recall if any of those communications with
11 to find out, you know, if Johnna was in fact being	11 Mr. Sayre would have been through Office Vision?
12 trained and what the issues were with her schedule.	12 A. I recall that at one time we had a conversation, we
13 Q. Now, those communications, those would have been in	13 meaning the regional vice-president and myself,
14 October of 2002?	14 with Mr. Sayre about handling issues in his store
15 A. Ongoing. Yes.	15 and addressing issues in his store, and if I
16 Q. Okay. And they would have been with the store	16 recall, part of the counseling that we gave
17 manager?	17 Mr. Sayre was that he needed to stay in
18 A. That's correct.	18 communication with myself regarding how he was
19 Q. Was it your normal practice to memorialize, meaning	19 addressing ongoing issues.
20 write down, those communications in some fashion?	20 Q. Okay. I'm a little confused then in terms of what
21 A. Not every phone call. No. And I typically would	21 did you mean by that? First of all, who was the
22 keep -- would have started a file, and any notes	22 regional vice-president at that time?
23 that I would have taken with regard to the issue	23 A. Well, it changed. It went from John Santos to I
24 would have gone into the file, an investigation	24 believe Greg Sandeno and then Ken Haverkost.
25 file. Johnson, Myrna v Fred Meyer	Exhibit Q. Do you recall who was the regional director when

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1 you had this communication with Mr. Sayre?
 2 **A. I believe it was John Santos initially.**
 3 Q. And was this a face-to-face meeting or something
 4 over the telephone?
 5 **A. We had gone up and met with Fred face to face, Fred**
 6 **Sayre.**
 7 Q. And what was the -- do you recall approximately
 8 when that was, that meeting?
 9 **A. I don't. I'm sorry.**
 10 Q. Do you recall if it was in the fall of 2002 or
 11 after Christmas?
 12 **A. I really don't remember --**
 13 Q. When you --
 14 **A. -- when we made the trip there.**
 15 Q. I'm sorry. I apologize for talking over you.
 16 When you made this trip to visit the Juneau
 17 store, what was the purpose for the trip?
 18 **A. Because of problems with Fred not addressing issues**
 19 **in his store, we went up to sit down and have a**
 20 **conversation with him about that.**
 21 Q. Now, did you -- when you -- had you reached the
 22 conclusion that there were problems with Fred not
 23 addressing problems in his store, that Fred was not
 24 doing his job?
 25 **A. We sat down with him to discuss that part of his**

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1 **San Miguel's attendance.**
 2 Q. And when you met with Mr. Sayre, was it for the
 3 purpose of dealing with broader issues than just
 4 Mr. San Miguel's attendance and tardiness?
 5 **A. Yes.**
 6 Q. What were the issues that you met with Mr. Sayre
 7 about in regards to Mr. San Miguel?
 8 **A. Complaints that he was not present when he said he**
 9 **was going to be, that he was scheduled to arrive at**
 10 **a certain time -- on the schedule to arrive at a**
 11 **certain time and would consistently arrive later**
 12 **than that, and then there were complaints about his**
 13 **failure to communicate to his people.**
 14 Q. And did you investigate those complaints?
 15 **A. Yes.**
 16 Q. Okay. And was that investigation one of your job
 17 duties at Fred Meyer?
 18 **A. Yes.**
 19 Q. Okay. And as a result of that investigation, did
 20 you reach some conclusions as to whether those
 21 complaints were valid?
 22 **A. Yes.**
 23 Q. Okay. What -- and with as much detail as possible,
 24 can you -- let's -- first of all, just in general
 25 describe to me your conclusion, and we'll go

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1 **job was to address issues as they arose. And --**
 2 Q. And when you -- you described that as a counseling
 3 session?
 4 **A. Yes.**
 5 Q. Okay. Did you believe at that time that his work
 6 performance was deficient in that regard?
 7 **A. Yes.**
 8 Q. And what was the basis for your conclusions or your
 9 conclusion that his work performance was deficient?
 10 **A. Because as issues arose in the store, they were not**
 11 **addressed by Fred.**
 12 Q. Okay. And what issues do you mean, to the best of
 13 your recollection?
 14 **A. There was -- to the best of my recollection, there**
 15 **were issues in a number of different departments of**
 16 **the store and that one of them was in apparel.**
 17 Q. Was the issue in apparel solely complaints by
 18 Ms. Havard or were there other complaints?
 19 **A. No. Johnna Havard's complaint was the one that we**
 20 **were dealing with in apparel.**
 21 Q. In terms of responding to her complaint, did you
 22 treat her complaint as being only about Mr. San
 23 Miguel's tardiness or attendance or was it wider or
 24 broader than that?
 25 **A. Her complaint was wider and broader than just time**

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1 through what your investigation entailed.
 2 **A. Well, the conclusions based on my conversations**
 3 **with a number of people in that department were**
 4 **that Jaime was not working like he was scheduled to**
 5 **work, that he was coming in late on a pretty**
 6 **regular basis, and that there was a lot of**
 7 **confusion as to who was supposed to do what with**
 8 **regard to assignment of duties.**
 9 Q. Okay. And what was the -- why was there confusion?
 10 What did your investigation determine in that
 11 regard?
 12 **A. Well, the main complaint from the people that I**
 13 **spoke with that worked for him was that there was**
 14 **either no direction or a change of direction after**
 15 **direction was initially given and that he was**
 16 **missing from work on a pretty regular basis.**
 17 Q. Were there complaints about Mr. San Miguel -- any
 18 complaints of him kicking objects or kind of
 19 physically acting out?
 20 **A. My notes show that one of the people that I spoke**
 21 **with said that he -- they knew him to have a temper**
 22 **problem and that they cited a time in I think the**
 23 **warehouse or the freight -- where the freight was**
 24 **that they had witnessed him kick a box of freight.**

A. 15 Now, regarding to these complaints, are they the

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1 normal sort of complaints that would have supposed
 2 to have gone to the store director?

3 **A. Yes.**

4 Q. Okay. And did you in your investigation find that
 5 this information had gone to the store director but
 6 Mr. Sayre had not acted upon or not responded to
 7 the complaints?

8 **A. Either he had not responded to the complaint or had
 9 not followed up on addressing the complaints with
 10 Jaime.**

11 Q. Okay. Now, did you ask Mr. Sayre what he had done
 12 in regards to these complaints?

13 **A. Yes.**

14 Q. Okay. And what did he tell you?

15 **A. He indicated that he had addressed some of the
 16 issues with Jaime, but clearly from what the
 17 investigation showed was that, even if he had
 18 talked to him about it, it hadn't done any good.
 19 Jaime hadn't improved his attendance at all.
 20 So it was a matter of not using the progressive
 21 discipline process to address an attendance issue
 22 with a manager.**

23 Q. Did you talk to Mr. San Miguel directly about these
 24 complaints?

25 **A. Yes.**

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1 Q. Okay. And what was his response in as much detail
 2 as you recall?

3 **A. As I recall, he was having some personal problems
 4 at home. He had a young son. He had gone through
 5 a divorce and had to take his son to daycare on a
 6 regular basis which interfered with his ability to
 7 come to work at the time that he was scheduled.
 8 Had gone through -- was having some personal issues
 9 at home, and it was interfering with his job.**

10 Q. And do you -- at that time did he tell you when he
 11 had actually gone through the divorce or been
 12 separated?

13 **A. I don't recall how long it had been, but to my
 14 recollection, it was still an issue for him.**

15 Q. Did he admit to you that the complaints were valid,
 16 that there was substance for the complaints?

17 MR. DICKENS: I'm going to object. That's
 18 overly broad as to which complaints you mean.

19 Go ahead.

20 Q. BY MR. CHOATE: We'll break them down. Did he
 21 admit to you that he was frequently tardy?

22 **A. Yes, he did.**

23 Q. Did he admit to you that when he was tardy he would
 24 fail to call in to advise his staff that he was
 25 going to be late? *Myrna v Fred Meyer*

Exhibit B. At 16 just 19 also. There is a page of

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1 **A. Yes, he did.**

2 Q. Okay. Did he admit to you that he did not
 3 communicate well with his staff during this time
 4 period?

5 **A. He admitted not to calling in when he was not going
 6 to come in. As far as his communication to his
 7 people, he didn't agree with that part of it as
 8 much. As I recall, he didn't admit to not
 9 communicating as well as he should have.**

10 Q. Okay. Did you find in your investigation that he
 11 wasn't communicating as he should have?

12 **A. The absence of written tours on a regular basis was
 13 an indicator that he wasn't communicating well to
 14 his people.**

15 Q. Okay. Was there also complaints that Ms. Havard
 16 when Mr. San Miguel would not show up for work
 17 would prepare a tour and then Mr. San Miguel when
 18 he came in late would then tear up her tour? Do
 19 you recall those complaints?

20 **A. Yes.**

21 Q. Did you find that there was support for that, that
 22 that in fact occurred?

23 **A. No.**

24 Q. Did you investigate that?

25 **A. Yes.**

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1 Q. Okay. What was your conclusion in that regard?

2 **A. I -- there was no -- I had no proof, no witnesses
 3 to Mr. San Miguel tearing up tours.**

4 Q. Were there complaints regarding employee --
 5 inconsistencies in employee discipline by Mr. San
 6 Miguel?

7 **A. You know, that part of it I don't recall as being
 8 that big of an issue.**

9 Q. Okay. If you could turn to 202 -- Bates
 10 No. 202417.

11 **A. Okay.**

12 Q. Can you tell me whose handwriting this is?

13 **A. That's mine.**

14 Q. Okay. Real quickly, if we're looking at 202417,
 15 418, 419, and then 420, 421, 422, 423, 424, 425,
 16 426, 427, 428, 429, 430, 431, that Bates set, are
 17 those all your handwritten notes?

18 **A. Yes.**

19 Q. Are they all part of the investigation you
 20 conducted?

21 **A. Yes.**

22 Q. Okay. Did you meet with Mr. Sayre before these
 23 notes were taken or after, if you recall?

24 **A. I don't recall. I really don't.**

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1 MR. CHOATE: Let me rephrase that question. I
2 think that's a good objection.

3 Q. BY MR. CHOATE: If a salaried employee is scheduled
4 to come to work at seven in the morning and doesn't
5 show and hasn't called in, what is the policy at
6 Fred Meyer for dealing with the fact that the
7 employee did not show and did not call in?

8 A. **Well, the policy is that you attempt to make --**
9 **whether you are hourly or salaried, you make an**
10 **attempt to contact the person to find out where**
11 **they are. If you are speaking to what the**
12 **discipline is for --**

13 Q. Yes. Why don't you tell me, what's the discipline
14 for that?

15 A. **If it's determined that there are no extenuating**
16 **circumstances and they just plain chose not to come**
17 **to work, typically you would for what they refer to**
18 **as a no call/no show, for the first offense, it's a**
19 **written warning. If it happens again, that's a**
20 **termination offense.**

21 Q. Okay. Now, what if the employee shows up two hours
22 late? What is the discipline?

23 A. **That's an attendance issue. You start with**
24 **counseling, and if it continues, then you move to**
25 **the next step of discipline, which would typically**

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1 **be a written warning.**
2 **You just go through the discipline process with**
3 **the hopes that the attendance issues will correct**
4 **themselves.**

5 Q. So if an employee is routinely tardy, and I'm
6 speaking generically, whether it's a management
7 employee or an hourly employee, then if they
8 routinely came in two hours late, that would be
9 considered to be a counseling -- initially a
10 counseling issue, and then if it continued,
11 discipline would ramp up?

12 A. **That's correct.**

13 Q. Who was responsible at the Juneau store in 2002 and
14 2003 to determine whether managers were working
15 during the hours that they were scheduled to work?

16 A. **That would be the store director.**

17 Q. And how does the store director know whether a
18 manager is working their shift?

19 A. **Typically they're there or they get feedback from**
20 **other members of the management team.**

21 Q. Now, during -- are managers expected to clock in
22 when they come to work?

23 A. **No.**

24 Q. Are they expected to clock in at all during their

25 *Johnston, Myrna v Fred Meyer*

Exhibit 15 *15-17 of 10*

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1 A. **I believe that they are asked to clock in once**
2 **during the week, and that's for a time and**
3 **attendance requirement.**

4 Q. Okay. Otherwise, there would be no way for the
5 store director to know whether a manager is showing
6 up for their shift other than the store director
7 following up on that, observing it?

8 A. **Correct.**

9 Q. If a manager -- managerial employee decides to
10 leave early on the shift, is that also an
11 attendance issue if they leave without giving
12 notice?

13 A. **Yes.**

14 Q. Again, would be responded to by a series of
15 progressive discipline?

16 A. **Correct.**

17 Q. Now, if a managerial employee leaves a job because
18 of a personal issue, whether it's a medical problem
19 or it's a kid daycare issue or some other reason,
20 without explanation, would that normally be
21 something which would be treated as an attendance
22 problem with counseling being the first step in
23 discipline?

24 A. **That's correct.**

25 Q. Did you determine in your investigation whether

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1 Mr. Sayre had ever counseled Mr. San Miguel
2 regarding his attendance issues that Ms. Havard
3 complained of?

4 A. **As I recall, he had sat down and talked with Jaime**
5 **San Miguel about attendance issues. Yes.**

6 Q. Do you know how -- whether he had talked about them
7 more than one time?

8 A. **I don't recall that.**

9 Q. I take it there was nothing in writing from
10 Mr. Sayre to Mr. San Miguel concerning his
11 attendance?

12 A. **I don't believe there was.**

13 Q. Okay. Similarly, based upon the documents we've
14 been given, there is -- your investigation didn't
15 find any writings from Mr. Sayre to Mr. San Miguel
16 regarding any of the other issues that Ms. Havard
17 complained about?

18 A. **If there were any written warnings or written**
19 **verbal warnings, they would have been in Jaime San**
20 **Miguel's file.**

21 Q. And there weren't any, were there?

22 A. **I don't recall, sir.**

23 Q. Okay. Now, in regards to the step discipline
24 process that you've referenced, what is that
25 process that would apply to a manager -- would the

<p style="text-align: right;">Page 92</p> <p>1 A. As I recall, he was given a last and final warning.</p> <p>2 Q. Okay. In your -- okay. If you could, then,</p> <p>3 explain to me where a last and final warning fits</p> <p>4 within the progressive discipline system you just</p> <p>5 discussed.</p> <p>6 A. It's a written warning that says "last and final"</p> <p>7 at the top, and that means that we're not -- we</p> <p>8 won't do any more written warnings, we won't do any</p> <p>9 other discipline, that when you are given a last</p> <p>10 and final warning, if you violate the rule again,</p> <p>11 you can expect to be discharged.</p> <p>12 Q. Now, in giving a last and final warning, had you</p> <p>13 concluded that Mr. San Miguel had already been</p> <p>14 given the series of progressive discipline steps</p> <p>15 before then, before that, or did you jump to that</p> <p>16 step?</p> <p>17 A. We jumped to that step based on the fact that he</p> <p>18 had been counseled by the store director. But due</p> <p>19 to the fact he was department manager and we had</p> <p>20 found that it was a pretty serious attendance</p> <p>21 issue, we decided that he deserved to receive a</p> <p>22 last and final warning, and that he understood that</p> <p>23 he could not continue to miss time as he had</p> <p>24 previously.</p> <p>25 Q. And the form that would have had the last and final</p>	<p style="text-align: right;">Page 94</p> <p>1 Could you just briefly go through the OVs that</p> <p>2 are part of this set which are in Exhibit 1 and</p> <p>3 confirm that these are the type of documents that</p> <p>4 would have been kept in your investigative file.</p> <p>5 Many of them are sort of from Johnna Havard to</p> <p>6 herself and then appear to have been forwarded to</p> <p>7 you.</p> <p>8 A. (Witness complies.)</p> <p>9 These are all the Office Visions that pertain</p> <p>10 to the Johnna Havard complaint. They would have</p> <p>11 all been in the same file.</p> <p>12 Q. Okay. And they would have been kept in the regular</p> <p>13 course of business?</p> <p>14 A. That's correct.</p> <p>15 Q. Would you have kept in that same file any</p> <p>16 communications with Mr. Sayre regarding this that</p> <p>17 would have been in writing?</p> <p>18 A. Yes.</p> <p>19 Q. So if they're not there -- as you recall -- strike</p> <p>20 that.</p> <p>21 As you recall, there were at least some</p> <p>22 communications to Mr. Sayre in this regard that</p> <p>23 were in writing?</p> <p>24 A. I would assume so.</p> <p>25 Q. Now, as a result of your investigation, at some</p>
<p style="text-align: right;">Page 93</p> <p>1 warning, it would say "last and final," like</p> <p>2 handwritten at the top of the written warning form?</p> <p>3 A. That's correct.</p> <p>4 Q. Okay. And do you recall issuing that?</p> <p>5 A. Yes.</p> <p>6 Q. And who would have signed off on that?</p> <p>7 A. It would have been the regional vice-president and</p> <p>8 myself and Mr. San Miguel. And probably Fred as</p> <p>9 well.</p> <p>10 Q. Now, in that same process or trip, did you reach</p> <p>11 certain conclusions regarding Mr. Sayre's</p> <p>12 management practices that resulted in some form of</p> <p>13 discipline for Mr. Sayre?</p> <p>14 A. You know, I don't recall if we disciplined</p> <p>15 Mr. Sayre that trip.</p> <p>16 Q. Did you discipline him at some other point?</p> <p>17 A. I believe we did.</p> <p>18 Q. And what -- if you recall, what was the discipline</p> <p>19 for?</p> <p>20 A. For failing to address issues in his store.</p> <p>21 Q. Including the one with Mr. San Miguel?</p> <p>22 A. That's correct.</p> <p>23 Q. Okay. Do you recall -- you've identified all of</p> <p>4 the handwritten documents as being in your own</p> <p>25 handwriting that are part of this Exhibit</p>	<p style="text-align: right;">Page 95</p> <p>1 point in time Mr. Sayre was also disciplined for,</p> <p>2 in part, failing to address the complaints</p> <p>3 regarding Mr. San Miguel; is that right?</p> <p>4 A. That's correct.</p> <p>5 Q. And do you recall what discipline was given to</p> <p>6 Mr. Sayre?</p> <p>7 A. I don't. As I recall, he was given a warning</p> <p>8 notice for failing to address issues in his store.</p> <p>9 I really can't speak to anything else.</p> <p>10 Q. And was it your understanding when that notice --</p> <p>11 did you give him that warning notice?</p> <p>12 A. I don't believe I did. I believe the RVP did, the</p> <p>13 regional -- the RVS, the regional vice-president</p> <p>14 did.</p> <p>15 Q. Do you know who that was at the time?</p> <p>16 A. I believe it was either John Santos or Greg</p> <p>17 Sandeno.</p> <p>18 Q. Do you know -- that would have been, in terms of</p> <p>19 your progressive disciplinary process, the stage</p> <p>20 after counseling and before suspension?</p> <p>21 A. That's correct.</p> <p>22 Q. And part of that written warning was for</p> <p>23 Mr. Sayre's failure to address complaints about</p> <p>24 Mr. San Miguel?</p> <p style="text-align: right;">Exhibit A That's correct.</p>

Mary Hill

October 25, 2006

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1 conversations or in-person meetings with Fred Sayre
 2 regarding either Jaime San Miguel or Myrna Johnson?

3 **A. Would you say that again, please.**

4 Q. Sure. In fact, let me rephrase the question.

5 At this time do you have any independent
 6 recollection that you did make notes of any
 7 conversations either on the phone or in person with
 8 Fred Sayre regarding Jaime San Miguel and the
 9 complaints by Johnna Havard?

10 **A. You mean do I have recollection of specific
 11 conversations?**

12 Q. No. Do you have recollection of specifically
 13 making any notes of any discussions?

14 **A. No.**

15 Q. Would you look at Exhibit 1, document stamped
 16 No. 202418.

17 **A. Okay.**

18 Q. For the record, those are handwritten notes. Whose
 19 handwritten notes are those?

20 **A. Mine.**

21 Q. Can you tell us what those notes reflect.

22 **A. I believe that this is Jaime's response to the --
 23 what was going on with Johnna Havard and issues he
 24 was having with her.**

25 Q. Was this in response to the complaints from

1 question as going outside the course -- outside of
 2 my direct examination.

3 MR. DICKENS: Well, Counsel, I don't think
 4 given what you raised that they do.

5 Go ahead, please.

6 MR. CHOATE: That's fine.

7 **A. What I understand at-will to mean is that the
 8 employer reserves the right to terminate at any
 9 time as well as the associate reserves the right to
 10 quit at any time.**

11 Q. BY MR. DICKENS: Now, you had a lot of questions by
 12 counsel with regard to progressive discipline
 13 steps. From your experience at Fred Meyer, were
 14 all those steps required to terminate a salaried
 15 employee at the Juneau store in 2001, 2002 or 2003?

16 **A. No.**

17 Q. Are you familiar with a document called a Fred
 18 Meyer Employee Responsibilities form?

19 **A. Yes, I am.**

20 MR. CHOATE: Again, Jim, this is so far out, I
 21 mean out of the scope of my questions for her. If
 22 you want to open this all up, we can go a lot
 23 longer.

24 But I'm going to object to you using her
 25 deposition to bring in information either for trial

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1 Ms. Havard?

2 **A. Yes.**

3 Q. And then documents stamped Nos. 202420 through
 4 202431, are those simply some of your handwritten
 5 notes based on interviews of different people at
 6 the Juneau store?

7 **A. Yes.**

8 Q. Can you tell us at this time if those handwritten
 9 notes were in person or over the telephone or based
 10 on interviews?

11 **A. They were in person.**

12 Q. So you were at the Juneau store?

13 **A. Yes.**

14 Q. Now, during the time that you had responsibility
 15 for the Juneau store as a human resources
 16 representative for Fred Meyer, that would have
 17 covered 2001, 2002 and part of 2003?

18 **A. Correct.**

19 Q. And for the salaried employees in the Juneau store
 20 during that time frame, what was their employment
 21 status?

22 **A. They were at-will.**

23 Q. And what do you understand employment at-will to
 24 be?

25 **JMR: I'm going to object to your**

1 testimony or something to deal with the summary
 2 judgment. This is way outside of what I asked and
 3 what the court set the limits on.

4 MR. DICKENS: It's not outside, and I'll
 5 explain it to the court if we have to do that.
 6 It's not at all.

7 MR. CHOATE: Sure.

8 Q. BY MR. DICKENS: Now, with regard to the Fred Meyer
 9 employee responsibilities form, are there actions
 10 that are set forth in that form that would be a
 11 basis for immediate termination?

12 **A. Yes.**

13 Q. Now, you mentioned during direct examination a last
 14 and final warning given to Mr. San Miguel. Can you
 15 clarify the circumstances under which that would be
 16 given to a salaried employee.

17 **A. If we determine that -- when we do an investigation
 18 and we determine that the actions or behavior of
 19 the salaried associate is such that -- we hold them
 20 to a higher standard than we do the people that
 21 they supervise simply because their job is to be
 22 the role model for adherence to the policy.**

23 **So if we through the course of an investigation
 24 determine that they have violated a rule, rather
 25 than go through a suspension or something like**

Exhibit 14 of 18